

# City of San Antonio Ethics Review Board Annual Report – 2004

City Ordinance 88874 approved on November 19, 1998, created the Ethics Review Board, which met for the first time on April 30th, 1999. In the year 2004, the Board met as a body eight times. In addition, various subcommittees/panels met numerous times. There were a total of six Determinations/Opinions (see Attachment A), and four Advisory Opinions (see Attachment B) rendered by the Board. The City Attorney's office rendered thirteen Advisory Opinions (see Attachment B). (The complete text of each Determination and/or Opinion can be obtained from the Office of the City Clerk; the extracts provided in the attachments to this document are for general information purposes only). During 2004, there were a total of nineteen registered lobbyists. A list – current as of December 31<sup>st</sup> 2004 – has been provided by the City Clerk (see Attachment D).

This report will be the final report of the Board under the provisions of the 1998 ordinance. As required by our charter, the Board sent a number of proposed changes to the Code to the City Council for its consideration and adoption as part of our 2003 annual report; these changes were required to bring the Code in alignment with state law, to enhance clarity or to make administrative corrections, and the Board recommended that they be approved and incorporated into the Code. Additionally the Board has worked throughout the past year with the Council's Governance Committee and its Ethics and Campaign Finance sub-committees to update and modify the Code to reflect changes required by the City Charter election held in May 2004, and by the adoption of a city Campaign Finance Regulation ordinance in August 2004. These changes necessitated modifying the responsibilities and jurisdiction of the Ethics Review Board to include oversight of those regulations and the development of the necessary implementation language. A new ethics ordinance including these updates and our previously proposed changes and modifications was adopted by City Council on January 15<sup>th</sup>, 2005. With one exception, the new ordinance incorporated all of the changes/modifications to the Code recommended by the Ethics Review Board (see Attachment C).

The Charter amendment formally dissolves the current board created by the 1998 ordinance and establishes an independent board that can deliver binding rulings and impose sanctions and fines. After the May City Charter referendum, the current board members tendered their collective resignations, to be effective upon creation of the new Ethics Review Board as specified in the revised City Charter. The current Board has interpreted the Code for over five years now. We have gained experience with the Code and our procedures, and this experience and the proven performance of the Board are valuable resources for the City. The current board members have expressed a willingness to serve on the new Ethics Review Board, subject to their vetting and subsequent appointment by City Council. Regardless of whether we are asked to continue to serve, we remain optimistic that the Code and the ethics review process will continue to create affirmative change in city governance and in our citizens' perception of the same. The members of the Board are confident that the Code has been, and will continue to be, a positive addition to our City, and we are proud of our contributions.

The Board was saddened to lose one of its original members to illness during the last year; Edgar Zepeda passed away on February 26, 2004. Edgar was the Council District 6 appointee, and had served with distinction on the Board since April 29, 1999.

## The Ethics Review Board Members – 2004

The following persons were confirmed by the City Council to serve on the Ethics Review Board for the terms indicated.

<u>NAME</u>	APPOINTED BY	DATE APPOINTED	<u>DATE</u> <u>REAPPOINTED</u>	DATE TERM EXPIRES
Michael S. Ariens	Mayor	Mar. 11, 1999	Mar. 30, 2000	Feb. 21, 2002
Charles F. Codd	District 1	Oct. 09, 2003		Feb. 21, 2005
August Stephen Johnson	District 2	Mar. 22, 2001	May 22, 2003	Feb. 21, 2005
Steven G. Gengenbacher	District 3	Feb. 07, 2002		Feb. 21, 2006
David de la Garza	District 4	Dec. 12, 2002		Feb. 21, 2005
Emilio Silvas	District 5	Nov. 4, 2004		Feb. 21 2006
Richard Bird	District 6	Sep. 23, 2004		Feb. 21, 2006
Elizabeth Benavides Melson	District 7	Apr. 01, 1999	Feb. 28, 2004	Feb. 21, 2006
Benjamin F. Youngblood III**	District 8	Apr. 01, 1999	May 22, 2003	Feb. 21, 2005
Arthur J. Downey*	District 9	Feb. 11, 1999	Aug. 01, 2002	Feb. 21, 2004
Loren G. Wood	District 10	Aug. 15, 2003		Feb. 21, 2005

<sup>\*</sup> Chair

<sup>\*\*</sup> Vice-Chair

### Attachment A

# **Ethics Determinations – 2004**

Number	Date	Questions
04-01	February 17, 2004	BG (Ret) Karen Rankin filed a complaint on December 22, 2003, alleging that Mr. Ralph Zendejas had violated the conflict-of-interest provisions under Part B, Section 1(a)(8) of the City Ethics Code. An Ethics Review Board Panel consisting of Michael Ariens, Stephen Gengenbacher, Elizabeth Melson, and Benjamin F. Youngblood, III, determined that Mr. Zendejas took action as a VAC commissioner that affected the financial interests of USMVPA, an organization to which he belonged as a member. The Panel further concluded, however, that Mr. Zendejas did not violate the conflict-of-interest prohibitions of Part B, Section 1(a)(8) of the Ethics Code, because he was not an officer, director or in a policy-making position for USMVPA at that time. The Board Panel recognizes that the members of the VAC are selected in part because of their personal history of military service and that individuals from this background frequently do belong to other military-associated organizations. It also notes that it would not be unusual or inappropriate for the VAC to consider issues pertaining to organizations to which VAC members might belong. As noted above, membership alone in a non-profit organization does not trigger the requirement to recuse under Part B, Section 1(a)(8). DISMISSED
04-02	March 23, 2004	On February 4, 2004, Sue Snyder filed a complaint against Frank Burney alleging he violated the City of San Antonio Ethics Code, Part E Section 6(a), (false statements to public officials), and Part E, Section 7 (identification of clients). On March 23, 2004, a panel of the Ethics Review Board of the City of San Antonio convened a hearing to consider testimony and evidence concerning the complaint against Mr. Burney. The members of the panel were Arthur Downey, Jr., Charles Codd, David De La Garza, Steven Gengenbacher, and Elizabeth Melson. Mr. Burney's actions, did not, considered in the context of the meetings in their entirety rise to an "effort to influence or persuade" a city official. Accordingly, the panel has concluded that Mr. Burney was not a "lobbyist" as the Ethics Code defines the term. He did not, therefore, violate the Ethics Code by failing to disclose the identity of the potential buyer for whom he attended the meetings. The panel noted, though, that statements by an individual who is registered as a lobbyist with the city are inevitably of great interest to members of the community who hold an opposing viewpoint. When contacting city officials on behalf of others, the line between advocacy and a statement regarding the status of an issue in controversy may be very thin. The panel encouraged those who participate in proceedings with city officials on behalf of others to be mindful of the effect of the comments they make and to be prepared to comply with the requirements imposed upon lobbyists under the city's Ethics Code. The complaint against Mr. Burney was DISMISSED.

Attachment A  Ethics Determinations – 2004 (Cont.)			
04-03	May 18, 2004	On April 22, 2004, a panel of the Ethics Review Board of the City of San Antonio, consisting of Michael Ariens, David De La Garza, Steven Gengenbacher, and Stephen Johnson met to consider the complaint filed on March 31, 2004, by Tony R. Garza alleging violation of Part B, Section 8 and 9 of the Ethics Code, by the Mayor, all members of City Council, the City Manager, and the City Attorney. The panel determined that the complaint failed to allege a specific violation of the Code and that no violation of the Code could be ascertained from the information set forth in the complaint. On May 18, 2004, the panel presented their recommendation that the complaint be dismissed to the Ethics Review Board. The board accepted the panel's recommendation. The complaint was DISMISSED.	
04-04	August 3, 2004	On July 12, 2004, a panel of the Ethics Review Board of the City of San Antonio, consisting of Chairman Arthur Downey, Jr., Elizabeth Melson, and Benjamin F. Youngblood, III, convened to consider the complaint filed by Kathleen Trenchard on June 2, 2204, against Zoning Commissioner Helen Dutmer and the other 10 members of the Zoning Commission. Ms. Trenchard did not specify a provision of the code that she believed Ms. Dutmer and the other members of the commission had violated. The facts alleged pertaining to Ms. Dutmer, though, implicated Part B, Section 1(a)(8) of the Code. Ms. Trenchard alleged no facts regarding the conduct of any member of the Zoning Commission except Ms. Dutmer. Accordingly, the complaint against all members of the Zoning Commission was DISMISSED, except with respect to Ms. Dutmer. Ms. Dutmer requested a hearing and that request was GRANTED. On August 3, 2004, the Ethics Review Board convened to consider the complaint filed by Kathleen Trenchard against Zoning Commissioner Helen Dutmer. At this hearing, Ms. Dutmer testified that she sits upon an advisory committee for Wayland Baptist University. This committee is not the board of trustees for this institution; it has no binding rule or decision-making authority. The recommendations of this committee are forwarded to the university administration for review and consideration. Ms. Dutmer, therefore, does not occupy a position as an officer, director or other decision-making position on behalf of Wayland Baptist University. Further, the Ethics Review Board found no measurable economic effect of the Northeast Gateway Corridor item voted upon by the Zoning Commission that would be "distinguishable from its effect on members of the public in general or a substantial segment thereof." Accordingly, the board concluded that Ms. Dutmer did not act in violation of the conflict of interest provisions of the Ethics Code in participating in the vote on the Northeast Gateway Corridor matter before the Zoning Commission. The complaint was DISMISSED.	

Attachment A  Ethics Determinations – 2004 (Cont.)			
04-05	August 3, 2004	In his complaint of May 17, 2004, Mr. Lajzerowicz asserted that Ms. Calk improperly used information she learned regarding the eight drivers' request to the Ground Transportation Unit to bring about the expulsion of the drivers from the cooperative. Further, he alleged that her dual positions as a TAB member and as a director on the Star Cab Board constituted an impermissible conflict. Specifically, he alleges violations of Part B, Section 4 (Confidential Information) and Part B, Section 6 (Conflicting Outside Employment). On the 8th day of July, 2004, a panel of the Ethics Review Board, consisting of Chairman Arthur Downey, Jr., August Stephen Johnson, Loren Wood and Charles Codd, convened to consider the complaint filed against Mary "Mada" Calk, member of the City of San Antonio Transportation Advisory Board ("TAB"). On the 3rd day of August 2004, the panel presented the matter to the full Ethics Review Board (ERB). In the opinion of the Ethics Review Board no facts were alleged which, if taken to be true, would support a finding of violation of Part B, Sections 4 or 6 of the Ethics Code, or any other provision of the Ethics Code. Accordingly, the Ethics Review Board accepts the recommendation of the panel to dismiss this complaint. The complaint was DISMISSED	
04-06	November 15, 2004	On November 15, 2004, a panel of the Ethics Review Board convened to consider the complaint filed by Janet C. Del Castillo on September 24, 2004, against Municipal Court Judge David Christian, Municipal Court Director Quentin Porter, Assistant City Attorney Chris Hebner, Assistant City Attorney Tom Shute and Martin Rodriquez. In her complaint, Ms. Castillo alleged that the respondents violated court protocol and the city's Ethics Code. Specifically, Ms. Castillo alleged that the respondents violated Part A, Section 1 of the Ethics Code (Declaration of Policy, Statement of Purpose). Ms. Castillo also alleged violations of Part B, Section 2 (Unfair Advancement of Private Interests). The Ethics Review Board reviewed the complaint and the responses and did not find that any of the city personnel complained against misused their positions to unfairly advance or impede a private interest in violation of Part B, Section 2 of the Ethics Code. Further, Part A, Section 1 is a statement of policy that sets forth the reason and objectives for the establishment of the code. The board interprets this section as a declaration of the code. The board interprets this section as a declaration of the code that the board must evaluate complaints. The standards are set out in Parts B through G, and it is against those standards that follow in Part B establish specific types of prohibited conduct, which if adhered to, would enable city personnel to avoid conflicts of interest that would impair their objectivity and impartiality. The board reviewed Ms. Castillo's complaint to ascertain whether her allegations, if accepted as true, would establish a violation of any of the specifically proscribed conduct under Part B of the code. The board concluded that the allegations, on their face, did not establish a violation of the code. The complaint was DISMISSED.	

### Attachment B

## **Ethics Advisory Opinions – 2004 (Ethics Review Board)**

Number	Date	Questions
013	September 1, 2004	Whether the phrase "termination of his or her official duties" as used in Part C Section 2(b) of the City of San Antonio's Ethics Code means the last day any "official duty" was performed or the last day of employment.
014	September 1, 2004	If an attorney or engineer is engaged for his or her professional services in relation to a discretionary contract with the City of San Antonio, and that attorney or engineer is a registered lobbyist, is disclosure required if the attorney or engineer does not engage in lobbying activities related to the contract?
015	September 13, 2004	Whether a non-profit organization, which intends to spend money for lobbying activities, must register as a lobbyist; and Whether persons acting on behalf of the organization must also register; and If a requirement for registration exists, when must the registration take place?
016	September 13, 2004	Whether an individual who works as an independent contractor for a non-profit organization and who represents that organization while appearing before the City must register as a lobbyist?

# **Ethics Advisory Opinions – 2004 (City Attorney's Office)**

Number	Date	Questions
081	January 9, 2004	May a city employee accept an invitation for free admission to a reception sponsored by a non-profit organization?
082	January 16, 2004	May a city employee accept hotel accommodation paid by a non-profit organization in connection with an event co-hosted by the City of San Antonio and the non-profit organization?
082	January 27, 2004	Must a city commission member recuse himself from official action on a matter that would affect the financial interests of a non-profit organization for which the official formerly served as a member of its board?
084	February 25, 2004	May a city employee serve on a hospital board outside of Bexar County?
085	March 15, 2004	May a city employee who chauffeurs for the city accept outside employment with a private business that provides chauffeuring services?
086	March 15, 2004	May a city employee accept payment of travel expenses and admission to attend an event related to the employee's official duties paid for by a private sector business?

	Ethics Advisory Opinions – 2004 (City Attorney's Office) (Continued)			
087	March 25, 2004	May a city official or employee accept an invitation to a reception for a sporting event?		
088	June 1, 2004	May the city sell surplus office equipment to city employees?		
089	June 28, 2004	May a city employee seek a contract with the City of San Antonio to sell products and services from his home-based business?		
090	July 2, 2004	May a city department contract with a business for which a city employee serves as an agent?		
091	September 1, 2004	May a city employee purchase real estate and enter into a development contract with the San Antonio Development Authority (SADA)?		
092	October 12, 2004	May a city employee serve on the board of directors of a homeowners' association?  and  If so, may he represent that association in settlement negotiations for a lawsuit?		
093	December 29, 2004	May a city employee accept a ticket to a sports event from a person who does business with the city?		

### **Attachment C**

### **Proposed Amendments to the Ethics Code – 2004**

The adoption of a new ethics ordinance on January 15<sup>th</sup>, 2005, with one exception, incorporated all changes to the code proposed or endorsed by the Ethics Review Board. The Board continues to object to the language of Section 3 Gifts, paragraph (b) Special Applications, sub-paragraph (13), which appears to contravene more restrictive language on gifts found elsewhere in the Code. This sub-paragraph also seems to violate the spirit of the reforms recommended by the Mayor's Committee on Integrity and Trust in Local Government. The Board strongly recommends Council revisit this paragraph and consider its deletion.

Part, Section	<u>Amendment</u>	<u>Disposition</u>
Part B: Present City Officials and Employees Section 3 – Gifts	(13) lodging, transportation, or entertainment that the official or employee accepts as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law, up to \$500 from a single source in a calendar year.	Pending: ERB recommends deletion of this provision

#### Attachment D

## Registered Lobbyists as of December 31, 2004 City of San Antonio

BALTAZAR R. SERNA, JR. 120 VILLITA SAN ANTONIO TX 78205-(210) 225-6700 NATURE OF BUSINESS: Registered: 01/10/1999

DONZE LOPEZ 17910 IH-10 WEST SAN ANTONIO TX 78257-(210) 208-4048

NATURE OF BUSINESS: AGGREGATES/CONSTRUCTION MATERIALS

Registered: 08/03/2000

EARL & BROWN, A.P.C. (FORMERLY EARL & ASSOCIATES)

111 SOLEDAD, # 1111 SAN ANTONIO TX 78205-

(210) 222-1500

NATURE OF BUSINESS: ATTORNEY AT LAW

**Registered: 01/17/1999** 

FRANCIS LAW FIRM 112 E. PECAN ST., #525 SAN ANTONIO TX 78205-(210) 222-1100 NATURE OF BUSINESS: LAW FIRM

Registered: 03/26/1999

FULBRIGHT & JAWORSKI, L.L.P. 300 CONVENT, STE. #2200 SAN ANTONIO TX 78205-(210) 270-7142 NATURE OF BUSINESS: ATTORNEY

NATURE OF BUSINESS: ATTORNEY

Registered: 02/16/1999

JENKENS & GILCHRIST 112 E. PECAN, SUITE 900. SAN ANTONIO TX 78205-(210) 246-5635

NATURE OF BUSINESS: LAW FIRM

Registered: 06/29/1999

### Attachment D (Cont.)

KAUFMAN & ASSOCIATES, INC. 100 W. HOUSTON, SUITE 1250 SAN ANTONIO TX 78205-

(210) 227-2000

NATURE OF BUSINESS: LAW FIRM

Registered: 02/11/1999

LAW OFFICES OF HOLLAND & KNIGHT 112 E. PECAN STREET, SUITE 2700 SAN ANTONIO TX 78205-(210) 229-3000

NATURE OF BUSINESS: ATTORNEY

Registered: 03/08/2002

LEO GOMEZ 100 MONTANA SAN ANTONIO TX 78207-(210) 554-7728

NATURE OF BUSINESS: PROFESSIONAL SPORTS MANAGEMENT/PUBLIC

**AFFAIRS** 

Registered: 03/26/1999

LOEFFLER, JONAS & TUGGEY, L.L.P 755 EAST MULBERRY, SUITE 200 **SAN ANTONIO TX 78212-**(210) 354-4300 NATURE OF BUSINESS: LAW FIRM

**Registered: 06/21/2000** 

M. EDWARD LOPEZ 9327 CHARLESTON SAN ANTONIO TX 78240-(210) 697-8658

NATURE OF BUSINESS: LEGISLATIVE REGULATORY CONSULTING

Registered: 03/05/1999

MARTIN, DROUGHT & TORRES, INC. 300 CONVENT ST., #2500

SAN ANTONIO TX 78205-

(210) 220-1339

NATURE OF BUSINESS: LEGAL SERVICES

Registered: 01/06/2003

PAVLIK-VALDEZ P.O. BOX 12031 **AUSTIN, TX 78711-**(512) 263-3990

NATURE OF BUSINESS: GOVERNMENTAL AFFAIRS

Registered: 07/10/2003

### Attachment D (Cont.)

REAL ESTATE COUNCIL OF SAN ANTONIO, INC.

1335 N. E. LOOP 410

SAN ANTONIO TX 78209-

(210) 804-4370

NATURE OF BUSINESS: NON-PROFIT TRADE ASSOC. REPRESENTING REAL

**ESTATE INTERESTS IN** 

**SAN ANTONIO** 

Registered: 03/04/1999

SBC COMMUNICATIONS INC. & SUBSIDIARIES

105 AUDITORIUM CIRCLE, SUITE 107

SAN ANTONIO TX 78205-

(210) 222-6076

NATURE OF BUSINESS: TELECOMMUNICATIONS

Registered: 11/18/1999

VINSON & ELKINS L.L.P.

2300 FIRST CITY TOWER

**HOUSTON TX 77001-6760** 

(713) 758-2222

NATURE OF BUSINESS: LAW FIRM

Registered: 05/29/2003

ZACHRY INC.

P. O. BOX 240130

**SAN ANTONIO TX 78224-0130** 

(210) 258-2662

NATURE OF BUSINESS: COMMERCIAL CONSTRUCTION

Registered: 04/30/1999